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U.S. Citizenship
and Immigration
Services

02



FILE: WAC 04 238 50750 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner operates a self-storage facility, claims to employ four personnel, and has an approximate gross annual income of \$615,000. It seeks to extend the employment of the beneficiary in the position of accountant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the August 25, 2004 Form I-129 and supporting documentation; (2) the director's November 4, 2004 request for further evidence (RFE); (3) counsel's January 26, 2005 response to the director's RFE; (4) the director's February 16, 2005 denial letter; and (5) counsel's Form I-290B and brief. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as an accountant. In an August 10, 2004 letter appended to the petition, the petitioner stated that the company continued to expand its operations and that it needed to temporarily employ the beneficiary as an accountant. The petitioner indicated:

[The beneficiary] will prepare the quarterly and yearly tax records, payroll statements and deductions, monthly expense reports[,] and financial statements. He will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments[,] and general ledgers.

[The beneficiary] will prepare balance sheets reflecting the companies' assets, liabilities[,] and capital. He will perform audits and prepare reports. [The beneficiary] will be responsible for updating and maintaining the account receivables that are outstanding. [The beneficiary] is fully knowledgeable in the field of accounting and have [sic] practical experience.

In a January 26, 2005 response to the director's RFE, counsel for the petitioner indicated that the beneficiary will:

Prepare quarterly and yearly tax documents (time spent - 25%): employ detailed and consolidated accounting records and supporting documents to accumulate financial reports; compute taxes owed and prepare tax returns ensuring compliance with tax requirements;

Establish, modify, document and coordinate the implementation of a computerized accounting system to automate accounting (time spent – 20%): research and identify accounting needs of management; document and submit recommendations to management for formulating accounting system or for system modifications such as improved data collection or report generation; plan, create, and organize appropriate accounting reporting system and internal control procedures according to research findings and management specifications; prepare formal studies of existing accounting methods; confer with management to implement use of new or modified accounting system; refine system methods, procedures, and controls to improve data flow, audit trail and compliance with accounting standards; amend or revise the existing accounting system and structures to overcome problems;

Prepare, examine and analyze accounting records, financial statements and reports (time spent – 30%): interpret and apply accounting principles according to State and Federal laws; conduct audits to assess effectiveness of controls, accuracy of financial records and efficiency of operations; establish controls for automated functions; correct miscalculations and justify variations in sum totals; ensure recorded postings and calculations are accurate and are in compliance with accounting standards and procedures; investigate inconsistencies and errors in posting and calculations in ledger; reconcile accounts to general or control ledgers and prepare adjusted entries as required;

Report to management on financial status of company (time spent – 25%): design and implement report formats and data collection systems; employ detailed and consolidated accounting records and supporting documents to accumulate annual statewide and agency financial reports, budget summaries and special reports; consolidate reports by various accounting functions and levels, creating conclusions and recommendations; organize reports for submission to management specifying and comparing factors affecting prices and profitability of services; set up standard accounting reports and statements, such as thorough [sic] cost and financial analysis, forecasts and projections reflecting interrelationships of accounting data; assist management with major budget components; notify management of status and availability of funds; assist in the development of annual operating plans; make recommendations in regard to financial policies and programs.

Counsel also provided copies of two Internet job announcements for accountants; the petitioner's California Quarterly Wage and Withholding Report ending September 30, 2004 showing the employment of the beneficiary and one other individual; and the owner of the petitioner's 2003 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, Schedule E showing rents received for AAA Storage in the amount of \$616,554 and total expenses for AAA Storage as \$522,069.

On February 16, 2005, the director denied the petition determining: that many of the described duties reflected duties performed by accountants as reported in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, but that sole reliance on a list of duties taken from the *Handbook* is insufficient to

establish that the position is a specialty occupation; that performing "specialty occupation" duties that are incidental to the primary function is insufficient to establish that the duties to be performed qualify as a specialty occupation; and that obtaining a degree in a related area does not guarantee that the proffered position is a specialty occupation. The director noted the absence of any bookkeeping, accounting, or auditing clerks employed by the petitioner and determined that the duties normally performed by bookkeeping, accounting, or auditing clerks would be part of the duties of the proffered position. The director also determined based on the evidence of record: that the petitioner did not have the organizational complexity to certify a position as an accountant; that the petitioner was not a company engaged in the type of business for which an accountant would typically be required, such as a public accounting firm, a payroll services firm, a tax preparation firm, a computer accounting systems or software developer, a government agency, or an academic institution; that the petitioner was not engaged in the type of business that would typically require a regular full or part-time accountant; and that there was no reasonable expectation that the petitioner would utilize the beneficiary solely in the capacity of an accountant or an auditor.

On appeal, counsel for the petitioner asserts that the director erred when determining that the beneficiary's performance of some bookkeeping duties made the proffered position a clerical position, not an accountant's position. Counsel contends that the duties of the proffered position are consistent with the duties of an accountant as described in the *Handbook* and that the majority of the beneficiary's duties will be accounting tasks. Counsel also states that the petitioner does not wish to employ the beneficiary as a bookkeeper or clerk and that a bookkeeper or clerk cannot perform the duties of the proffered position as the duties require analysis and understanding of accounting principles. Counsel avers that the director misinterpreted the description for accountants in the *Handbook* and failed to offer a real justification for its denial of the petition.

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the Department of Labor's *Handbook* reports that the industry requires a degree.

While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary as an accountant, it has reached its conclusions on grounds other than those relied upon by the director. Upon review of the record the AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity, nor operates the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "[n]ation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." It does not indicate that the accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, government agencies, or academic institutions, as stated by the director. Accordingly, the petitioner's need for an accountant may not be discounted based on its type of business. Neither does the fact that the petitioner does not employ an accounting/bookkeeping staff establish that it would not employ the beneficiary to perform the duties of an accountant. The AAO withdraws the director's findings in this regard.

The petitioner has stated that the proffered position is that of an accountant. To confirm that the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties of the proffered position. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds that not all types of employment that require the use and understanding of accounting principles require degreed accountants. The performance of duties requiring accounting knowledge does not establish the proffered position is that of an accountant. The question is not whether the position requires knowledge of accounting principles, which it may, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a

credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.¹

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the description of the beneficiary's duties and the nature of the petitioner's business operations. The petitioner's initial description of the duties of the proffered position is too general to conclude that the position will require more than a general understanding of accounting principles such as that attained thorough an associate's degree.² While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, like that in the instant matter, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

At the time of filing, the petitioner stated on the Form I-129 that it employed four individuals. However, the petitioner's California Form DE-6 for the quarter in which the petition was filed shows that the petitioner only employed the beneficiary and one other individual. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Turning to the description of the duties of the proffered position submitted in response to the director's RFE, the AAO notes that again the petitioner provided statements indicating generally that the beneficiary would prepare tax documents, interpret and apply accounting principles, and conduct audits, duties within the purview of junior accountants with less than a four-year degree. In addition, the AAO observes that the proffered position also requires that the beneficiary spend time establishing, modifying, documenting, and coordinating a computerized accounting system, duties that resemble the duties of a database administrator, not those of an accountant. The AAO notes that the *Handbook* reports that persons with a variety of majors and persons with less than a

¹ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

²According to the website for Skyline College, a community college located in San Mateo, CA (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

baccalaureate degree find employment as database administrators. Thus, this portion of the proffered position's duties does not elevate the position to a specialty occupation.

The petitioner has failed to establish that it is a business with complex financial requirements. The petitioner has not provided documentary evidence that it is a growing business with complex financial requirements. The record does not contain evidence, such as later-filed tax records, audits, sales projections, loan agreements or business plans that document a pattern of growth in the petitioner's revenues or business operations. The record contains only the owner of the petitioner's 2003 IRS Form 1040, which is insufficient to substantiate that the petitioner's business operations are complex. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require a degree in accounting in the proffered position.

The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear to be more closely aligned to accounting responsibilities that may be performed by junior accountants who have some knowledge of computers, employment that does not impose a baccalaureate degree requirement in a specific discipline on those seeking entry-level employment. As a result, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant matter, the petitioner has submitted two Internet job announcements for a position as accountant. However, the petitioner has not presented evidence that the advertising employers are similar to the petitioner in size, number of employees, level of revenue, or type of business. Moreover, the descriptions while containing some general similarities are insufficient to substantiate that the positions are parallel. The petitioner has not submitted evidence that similar organizations require a specific degree for duties parallel to the duties of the proffered position. As observed above, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior accountant who is not required to have a four-year degree. Therefore, the proffered position may not be established as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this matter, the petitioner has not submitted evidence that it employed only degreed accountants to perform the petitioner's financial tasks prior to the beneficiary's employment.

The AAO acknowledges that the record contains evidence that the beneficiary was previously approved for H-1B status on the basis of a petition filed by this same petitioner. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. However, if that record contained the same evidence as submitted with this petition, the CIS would have committed material error in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). The petitioner has not provided independent employment history with regard to the proffered position and cannot establish it as a specialty occupation on the basis of its normal hiring practices. The petitioner has failed to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant with computer skills. As a result, the record also fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the director's decision, the AAO observes that the record contains a certificate showing the beneficiary has been registered to practice as a certified public accountant in the Philippines and the beneficiary's transcript from Meycauayan College in the Philippines. The record, however, does not contain a credentials evaluation of the beneficiary's foreign transcript or certificate. Thus, the petitioner has not provided evidence that the beneficiary is qualified to perform services in a position requiring a four-year degree. For this additional reason the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.